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Letter dated 13 September 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my predecessor's letter of 5 May 2004 (S/2004/365). The Counter-Terrorism Committee has received the attached third report from Cook Islands submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 8 September 2004 from the Secretary of the Ministry of Foreign Affairs and Immigration of the Government of Cook Islands addressed to the Chairman of the Counter-Terrorism Committee

I am pleased to attach herewith for the attention and consideration of the Counter-Terrorism Committee, the Cook Islands response to the Committee's request for further clarification on the Cook Islands supplementary report (see enclosure).

As you may be aware, the Government of the Cook Islands is endeavouring within its limited resources to undertake relevant measures to combat terrorism in all its manifestations. Although the Government has implemented a legislative regime hostile to terrorism activities, the Government recognizes that it still has a number of tasks to complete, notwithstanding acceding to five international conventions and protocols relating to terrorism.

The Government of the Cook Islands would like to reassure the Committee that it will continue to lend its support to the construction of effective global machinery for preventing and suppressing terrorist acts occurring in the Cook Islands and elsewhere.

(*Signed*) Edwin **Pittman**
Secretary

Enclosure

Third Report to the United Nations Security Council
Counter-Terrorism Committee on
Counter-Terrorism Activities in the Cook Islands

1. INTRODUCTION

1.1 Since the submission of its supplementary report (S/2002/1455) on 16 September 2003, the Government of the Cook Islands has committed resources and personnel to put in place a legislative and administrative environment hostile to anti-money laundering with the view to combating the financing of terrorism. It has completed its Anti-Money Laundering and Combating the Financing of Terrorism legislative framework including the recent enactment of the Terrorism Suppression Act 2004 ("the Act") on 1st June 2004. This Act, along with the Aviation Offences Amendment Act 2004 (also enacted on 1st June), completes the Cook Islands legislation required under the 12 counter-terrorism Conventions.

2. IMPLEMENTATION MEASURES

2.1 The Cook Islands recalls the United Nations Security Council Resolution 1373 (2001) of 28 September 2001 calling upon all States to report to the Counter-Terrorism Committee (CTC). The Cook Islands further recalls Resolution 1456 adopted by Security Council Ministers stressing the obligation on States to report to the CTC according to the timetable set by the CTC. Given resource constraints, the Cook Islands has been unable to meet the timetable set by the CTC.

2.2 The Cook Islands reaffirms its support for global efforts to promote international peace and security and is committed to actively participating and collaborating with all States to foster a safe and secure environment. In the spirit of forging cooperation, the Government of the Cook Islands submits this report to the CTC on activities it has undertaken to date and those it proposes to take to counter terrorism as called for in the above Resolutions. This report is additional to its First Report contained in documents S/2001/1324 and S/2001/1324/Add.1. The format of this report follows the outline of UNSC Resolution 1373 (2001).

3. S/RES/1373(2001) Paragraph One (b)

3.1 The principal objects of the Act are to implement UNSCR Resolution 1373 and the twelve Counter-Terrorism Conventions prevent terrorists from operating in the Cook Islands and prevent persons in the Cook Islands from taking part in terrorist activities or supporting terrorism.

3.2 The Act defines "terrorist act", "terrorist group", and "terrorist property", and creates the offence of "terrorism financing".

4. S/RES/1373(2001) Paragraph One (c)

4.1 The Act is divided into seven parts with the most relevant being summarised here.

4.2 Part Two deals with those individuals and entities maintained on those lists established under UN Security Council Resolution 1267(1999). These lists are kept by the Ministry of Foreign Affairs and Immigration and is made available to the general public including although not limited to trustee companies, pearl farmers, car dealers and real estate agents.

4.3 Part Three addresses offences related to financing of terrorist activities, provision of property or services or weapons to terrorist groups, harbouring of persons committing terrorist acts, and recruitment of persons to be members of terrorist groups or to participate in terrorist acts.

4.4 Part Four focuses on the management and forfeiture of property of specified entities. Section 30 of the Act allows for the disclosure of information by a reporting institution to the Solicitor General about the existence of any property in its possession or control that is owned or controlled by or for a terrorist group. The Solicitor General may also tell the Financial Intelligence Unit or other appropriate authority of a foreign country about any information it has about any property of the kind mentioned under this section.

4.5 Part 6 of the Act provides for certain counter-terrorism conventions offences that had not yet been recognised under the law of the Cook Islands as criminal offences[1]. These include the movement of nuclear material, and offences to maritime safety, plastic explosives and terrorist bombings.

5. S/RES/1373(2001) Paragraph One (d)

5.1 Section 12 of the Act, provides that a person must not directly, or indirectly, knowingly make available property or other financial or other related services to, or for the benefit of, a terrorist group, other than for the purposes of humanitarian aid or legal services. However, the Act allows for the provision of the property or service if it is of a kind that is authorised by a resolution of the UN Security Council.

5.2 The Police and other Government authorities including the general public also have access to those lists maintained by the 1267 Committee.

6. S/RES/1373(2001) Paragraph Two (a)

Recruitment

6. 1 Government now has in place legal provisions criminalizing the recruitment of persons to terrorist groups. Section 16 of the Act, makes it an offence for a person to knowingly agree to recruit another person to be a member of a terrorist group or to participate in the commission of a terrorist act. The penalty for contravening this section is a term of imprisonment of up to 14 years.

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[1] (1) Convention on the Physical Protection of Nuclear Material, Vienna/New York, 3 March 1980;
(2) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, 10 March 1988;
(3) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, Rome, 10 March 1988;
(4) Convention on the Marking of Plastic Explosives for the Purposes of Detection, Montreal, 1 March 1991; and
(5) International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997.

Weapons and explosives

6.2 The Arms Ordinance 1954 makes it an offence for any person to carry or be in possession of any firearm, ammunition, or explosive except for some lawful, proper and sufficient purpose. The Ordinance further provides that no person shall import into the Cook Islands without a lawful permit for the purposes of sale, or sell or expose or keep for sale any firearms, or any cartridges, cartridge cases, gunpowder bullets, shot or other ammunition. The police will maintain all firearms, ammunition or explosives seized or surrendered under this Ordinance for such period as determined by the High Court.

6.3 The Cook Islands is currently completing a draft Weapons Control Bill which seeks to update our laws on firearms with a view to revoking the Arms Ordinance 1954.

6.4 The Act defines a weapon to include a firearm, chemical, biological or nuclear weapon.

6.5 Section 35 of the Act makes it an offence for a person who without the lawful authority imports or exports nuclear material to or from the Cook Islands, or receives, possess, uses, transfers, alters or disposes nuclear material.

6.6 Section 39 of the Act makes it an offence for a person to manufacture, possess or transport unmarked plastic explosives knowing that they are unmarked.

6.7 Customs officials also monitor the importation and export of cargo that arrives or leaves by plane or ship.

7. S/RES/1373(2001) Paragraph Two (b)

7.1 The security-related agencies in the Cook Islands – Customs, Immigration and Police are all in regular contact with regional agencies of which they are members: Oceania Customs Organisation (OCO); Pacific Immigration Directors Conference (PIDC) and the South Pacific Chiefs of Police Conference (SPCPC). Their counterparts in for example, Australia, New Zealand and elsewhere also alert them to anticipated terrorist or other illegal activities.

7.2 In adopting the Combined Law Agency Group (CLAG) concept in the Cook Islands the Customs Division has signed Memorandums of Understanding with the Police, Immigration and Agriculture to ensure inter-agency cooperation when necessary.

7.3 With regards to anti-money laundering and combating the financing of terrorism (AML/CFT) measures, in March 2004 Cabinet established a "Coordinating committee of Agencies and Ministries (CCAM) to provide a "whole of Government" approach to the implementation of AML/CFT legislation. The Financial Intelligence Unit chairs the Committee. One of the first tasks of the Committee was to identify technical assistance and training needs which have been incorporated into a comprehensive matrix and provided to the Asia/Pacific Group for Money Laundering (APG) to distribute to donors. The terms of reference of CCAM were modelled on the Terms of Reference of the National Coordinating Committee distributed on a previous occasion by the APG.

7.4 The Cook Islands AML/CFT Working Group will be renamed the AML/CFT

Consultation Group as it moves its primary focus from legislative reforms to the implementation of the reforms in the financial sector, particularly the private sector. The Head of the Financial Intelligence Unit will utilise this Group as a consultative committee and as the core for private sector training opportunities in respect of the implementation of AML/CFT obligations. The key Government agencies and ministries responsible for the implementation of AML/CFT measures are the Financial Intelligence Unit, Financial Supervisory Commission and the Crown Law Office. These entities are working closely to identify any legislative gaps, implementation issues and operational requirements.

7.5 The Cook Islands participated in a Pacific Roundtable on Counter-Terrorism held in Wellington, New from 10-12 May 2004. The Roundtable was convened to take stock of the region's progress in meeting international counter-terrorism obligations at a time when new anti-terrorism measures are imminent. The Roundtable discussed what the region still needed to do to meet its international counter-terrorism commitments, the resource constraints facing Forum Island members and what assistance could be drawn on.

7.6 The Roundtable also identified a number of possible practical initiatives that the region might take which would assist it in making progress and heightening the region's ability to deter terrorism in the Pacific region.

7.7 The Roundtable shared the view that it would be helpful to establish a network of central contact points. Terrorism is a whole-of-government issue, requiring an active coordination and information sharing with government to fashion an effective national response. A central and senior contact point, with a whole-of-government perspective, could help ensure that efforts to coordinate across the region are more effective.

8. S/RES/1373(2001) Paragraph Two (c)

8.1 The Cook Islands does not have any legislation to deal with refugees. To date, the Immigration Division has not yet issued refugee status to anyone. To address this gap in the legislation, the Immigration Division has drafted legislation to update the current Entry, Residence and Departure Act 1971-72. The new Act will allow for the deportation of persons threatening national security and suspected terrorists. Government has a raft of legislation available (summarised below) to deport undesirable persons.

8.2 The Undesirable Immigrants Exclusion Act 1919 although outdated aims to prevent the entry into the Cook Islands of 'undesirable' persons. Under the Act, anyone who is not a permanent resident and is disaffected or disloyal, or of such a character that his presence would be injurious to the peace, order and good Government may be prohibited from landing in the country.

8.3 The provisions of the Undesirable Immigrants Exclusion Act 1919 have to some extent been duplicated in the Entry, Residence and Departure Act 1971-72 which provides the Minister [for Immigration] with the power to deport persons who in the opinion of the Minister is disaffected, disloyal or likely to be a danger to the peace, order or good Government of the Cook Islands. The Minister may also deport a person from the Cook Islands who cannot support himself through lawful means or has been convicted in the Cook Islands of an offence punishable by imprisonment for one year or more or is residing in the Cook Islands by virtue of an entry or residence permit that was issued as a

result of fraud or misrepresentation or is of bad character or dissolute habits. Under the Entry, Residence and Departure Act 1971-72 also, any person who falsely represents his status liable to a fine and/or imprisonment for a term not exceeding twenty-eight days.

9. S/RES/1373(2001) Paragraph Two (e)

9.1 The Act defines a terrorist act as follows: (1) In this Act "terrorist act" means an act or omission in or outside the Cook Islands that –

(a) constitutes an offence within the scope of a counter terrorism Convention; or

(b) is mentioned in subsection (2).

(2) For paragraph (1)(b), the act or omission -

(a) must –

(i) involve death or serious bodily injury to a person; or

(ii) involve serious damage to property; or

(iii) endanger a person's life; or

(iv) create a serious risk to the health or safety of the public or a section of the public; or

(v) involve the use of weapons; or

(vi) involve introducing into the environment, distributing or exposing the public to any –

a. dangerous, hazardous, radioactive or harmful substance; or

b. toxic chemical; or

c. microbial or other biological agent or toxin; or

(vii) involve serious disruption to any system or the provision of services directly related to essential infrastructure which includes any place used as a harbour or place used for the storage or supply of water, gas or the supply of electricity; and

(b) must be intended or, by its nature and context, reasonably be regarded as being intended –

(i) to intimidate the public or a section of the public; or

(ii) to compel a government or an international organisation to do, or refrain from doing, any act; and

(c) must be made for the purpose of advancing a political, ideological, or religious cause.

(3) However, an act or omission mentioned in subsection (2) does not include an act or omission that -

(a) is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in sub paragraph (2) (a)(i), (ii), (iii) or (iv); or

(b) occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

10. S/RES/1373(2001) Paragraph Two (f)

10.1 The Mutual Assistance in Criminal Matters Act 2003 was enacted on 7th May 2003 which is administered by the Crown Law Office. The objects of the Act are to regulate the provision of assistance in criminal matters when a request is made by a foreign country for –

(a) the taking of evidence or the production of a document or other article, for a proceeding in the foreign country;
(b) the issue of search warrants and seizure of anything relevant to a proceeding or investigation in the foreign country;
(c) the forfeiture or confiscation of property for the commission of a serious offence against the law of a foreign country;
(d) the restraining of dealings in property that may be forfeited or confiscated because of the commission of a serious offence against the law of a foreign country, the Act sets out the procedures for providing mutual assistance to foreign jurisdictions.

10.2 This Act also facilitates the Cook Islands providing international assistance in criminal matters when a request is made by a foreign country to make arrangements for a person who is in the Cook Islands to travel to the foreign country to give evidence or assist in an investigation. It also facilitates the Cook Islands obtaining similar international assistance in criminal matters.

10.3 To date, the Crown Law Office has received four requests from foreign countries for assistance; three of these requests have been addressed with one pending.

11. S/RES/1373(2001) Paragraph Two (g)

11.1 As Cook Islanders carry New Zealand passports, their passports are issued by the New Zealand Government. New Zealand has a prized passport that is backed up by good visa free arrangements with many overseas countries. To ensure that New Zealand can continue to provide a high integrity passport the decision was made by the New Zealand Government to reduce the numbers of lower security manual passports in circulation. From 1 April 2004, all New Zealand missions overseas (with the exception of London and Sydney who can produce machine-readable passports) permanently ceased to issue passports. Although, obviously some Missions can still issue limited validity passports for emergency travel situations.

11.2 By way of background information, the full impact of identity related crime in the Pacific region is largely unknown. Currently there is no estimated cost of identity fraud in the Pacific region. To address some of these concerns, the Pacific Region is considering the establishment of a Pacific Region Identity Protection Project under which six registers would be created as part of one intelligence database:

- Fraudulent identities
- Stolen identities
- Lost/stolen documents of identity
- Documents of identity issued by authorities including security features
- Known identity fraud offenders; and

- A Pacific Fraud Centre

11.3 At this stage, the region has agreed to a 12-month pilot Pacific Region Identity Protection Project subject to the availability of funding.

12. S/RES/1373(2001) Paragraph Three (e)

12.1 The Cook Islands is ready to accede to the five international conventions and protocols relating to terrorism[2] as the offences set forth in those Conventions and Protocols have been included in the Act. It is envisaged that the Cook Islands will accede before the end of this year. However, those offences have not yet been included as extraditable offences in the bilateral treaties to which the Cook Islands are a party.

13. S/RES/1373(2001) Paragraph Three (g)

13.1 The Cook Islands Government would deal with an alleged terrorist from another country, which claims political motivation for terrorist acts by consulting with the appropriate experts in other countries or in regional and/or international organisations to assist it in addressing this matter. If it were proven that the alleged person is a terrorist then, the Government would not hesitate in removing the person from the Cook Islands.

14. LEGISLATIVE DEVELOPMENTS

This part describes new or amended legislation relating to counter-terrorism activities, whether enacted by the Cook Islands Parliament or is pending due to various circumstances.

14. 1 NEW LEGISLATION

14. 2 Regulations

- Banking (Fees) Regulations - which sets out various license fees under the Banking Act 2003.
- Extradition Regulations - which sets out the time within which the Attorney-General must make a final decision as to whether to surrender a person to a requesting country (6 days) and the time within which the Attorney-General may issue a temporary surrender warrant (6 days). It also sets out the form in which a judge or JP is to endorse a

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[2] Convention on the Physical Protection of Nuclear Material, Vienna/New York, 3 March 1980;

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10 March 1988;
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, Rome, 10 March 1988;
- Convention on the Marking of Plastic Explosives for the Purposes of Detection, Montreal, 1 March 1991; and
- International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997.

warrant of arrest in a 'backing of warrants procedure' i.e. when application is made on behalf of a South Pacific country for the endorsement of a warrant for arrest of a person issued in that South Pacific country.

- International Companies (Evidence of Identity) Regulations - sets out the requirements for trustee companies or custodians in obtaining evidence of identity in respect of a person for whom a share is held on trust or in respect of a bearer of a bearer instrument.
- Financial Supervisory Commission (Qualifications of Compliance Officers) Regulations - Under the Financial Supervisory Commission Act 2003, licensed financial institutions are required to appoint Compliance Officers whose responsibilities are to establish and maintain office and accounting procedures to enable the financial institution to meet its obligations in respect of customer identification, record keeping and any other matters that may be prescribed. The Act provides that the Compliance Officer's qualifications shall be prescribed, namely, not less than three years work experience in finance, law, accounting or insurance.
- Financial Transactions Reporting (Forms) Regulations - Under the Financial Transactions Reporting Act 2004 ("FTRA"), a financial institute must report any cash transaction and electronic funds transfer over $10,000. It must also report a suspicious transaction. These regulations set out the forms that must be used in providing such reports to the Financial Intelligence Unit ("FIU").
- Proceeds of Crime (Border Currency Report Form) Regulations - Section 96 of the Proceeds of Crime Act 2003 requires that any person leaving or arriving in the Cook Islands carrying more than $10,000 in cash or negotiable bearer instruments, is to report this to the authorities. These regulations set out the form that is to be used when making such a report.

14.3 New Acts

- Financial Transactions Reporting Act 2004 – compilation of FTRA 2003, FTR (Customer Identification) Regulations, and the amendments required to bring the FTRA up to reviewed FATF 40+8.
- Narcotics and Misuse of Drugs Act 2004 – deals with the importation, exportation, manufacture, sale, distribution, use and possession of narcotics and makes provisions for the prevention of misuse of drugs and narcotics. This Act repeals The Narcotics Act 1965. Parliament requested that "methamphetamine" class drugs be upgraded from Class B to Class A to reflect the impact they would have in the Cook Islands.

14.4 Amendments

- Proceeds of Crime Amendment Act 2004 – removes the discretion for forfeiture and pecuniary penalty orders on conviction and introduces the concept of "organised criminal group". The amendment also incorporates the terms "tainted property" and "terrorist property".

- International Companies Amendment Act 2004 – removes ministerial exemptions and secrecy provisions and tidies up some poorly drafted provisions existing in the principal Act such as section 54A which deals with "capital maintenance".
- International Trusts Amendment Act 2004 – tidies up secrecy provision and certificate of registration section of the primary Act. Ministerial Exemptions have been repealed.
- International Partnerships Amendment Act 2004 – tidies up secrecy provision and removes ministerial exemption provisions.
- Crimes Amendment Act 2004 – new Part of the act deals with "People Smuggling and Trafficking", expands the definition of "Money Laundering" to reflect the recommendations of the IMF Module II assessment in February 2004 and the reviewed FATF 40+8 Recommendations. This amendment increases the penalty as the principal offence, the provision of explosives, is already in the Crimes Act.
- Aviation Offences Amendment Act 2004 – deals with security issues surrounding airports.
- Mutual Assistance in Criminal Matters Amendment Act 2004 – overrides all secrecy provisions when complying with the MACM Act and tidies up some of the terminology from the principal Act.

14.5 Pending Legislation

- The Weapons Control Bill is currently being finalised, with a view to being tabled at the next Parliament session.

14.6 Pending Regulations

- Revocation – International Companies (Evidence of Identity) Regulations 2003 and a new International Companies (Evidence of Identity) Regulations substituted so as to be 'in line' with the customer identification provisions of the Financial Transactions Reporting Act 2004.